

STATEMENT OF THE CASE

Appellant-Respondent, Cathy Marie Allen (Mother), appeals the trial court's termination of her parental rights to her minor child, J.A.

We affirm.

ISSUE

Mother raises one issue on appeal, which we restate as: Whether there was sufficient evidence to support the trial court's termination of her parental rights to J.A.

FACTS AND PROCEDURAL HISTORY

J.A. was born July 8, 2004, in South Bend, Indiana, weighing three pounds and eleven ounces. Both J.A. and Mother tested positive for cocaine at J.A.'s birth. Consequently, Saint Joseph Regional Medical Center, the hospital where J.A. was born, contacted the St. Joseph County Office of Family and Children (COFC) to report that J.A. was born with cocaine in his system. On July 12, 2004, the COFC removed J.A. from Mother's care.

On July 28, 2004, the COFC filed a Child in Need of Services (CHINS) petition, alleging that J.A. needed services because he was born with fetal alcohol syndrome and traces of a controlled substance in his body. A subsequent medical evaluation revealed that J.A. also had Down's Syndrome and a heart condition. The CHINS petition further noted that Mother had received no prenatal care, admitted to recent cocaine use, and possessed no resources, such as a crib or clothes, for her newborn.

On October 13, 2004, the trial court held an initial hearing on the CHINS petition. At the hearing, Mother admitted to the allegations, and J.A. was adjudicated as a CHINS.

On November 11, 2004, the trial court held a dispositional hearing on the CHINS petition, at which Mother was ordered to participate in counseling, visit J.A., complete a drug and alcohol rehabilitation program, complete parenting classes, complete a parenting assessment, undergo a physiological evaluation, maintain stable housing and employment, and remain drug free. At that time, Mother indicated to the family caseworker that she would arrange the ordered services on her own.

On August 8, 2005, since Mother had not completed the services ordered, the COFC filed a Petition for Involuntary Termination of Parent-Child Relationship (the Petition) seeking to terminate Mother's parental rights to J.A. On March 17, 2006, the trial court held a hearing on the Petition. On March 20, 2006, the trial court issued an order terminating Mother's parental rights to J.A.

Mother now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Mother argues that the evidence presented at the hearing was insufficient to terminate her parental rights to J.A. Specifically, Mother contends that the evidence failed to demonstrate that the conditions leading to J.A.'s removal would not be remedied, or that continuation of the parent-child relationship posed a threat to J.A.¹

I. Standard of Review

We will not set aside a trial court's order to terminate parental rights unless it is clearly erroneous. *In re Involuntary Termination of Parent Child Relationship of A.H.*,

¹ In her Summary of the Argument, Mother additionally states that the evidence did not support the conclusion that termination of her parental rights was in J.A.'s best interest. However, Mother fails to develop this argument later in her brief. Therefore, we waive this issue for our review. See Ind. Appellate R. 46(A)(8).

832 N.E.2d 563, 570 (Ind. Ct. App. 2005). In determining whether the evidence is sufficient to support the judgment of termination, we neither reweigh the evidence nor judge the credibility of witnesses. *Id.* We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *Id.*

The involuntary termination of parental rights is the most extreme measure that a court can impose and is designed only as a last resort when all other reasonable efforts have failed. *In re D.G.*, 702 N.E.2d 777, 780 (Ind. Ct. App. 1998). This policy is in recognition of the Fourteenth Amendment to the United States Constitution, which provides parents with the right to establish a home and raise children. *See id.* However, these protected parental rights are not absolute and must be subordinated to the children's interest to maintain the parent-child relationship. *Id.*

The purpose of terminating parental rights is not to punish parents but to protect their children. *Matter of A.N.J.*, 690 N.E.2d 716, 720 (Ind. Ct. App. 1997). Although parental rights have a constitutional dimension, the law allows for their termination when parties are unable or unwilling to meet their responsibility as parents. *Id.* In the present case, to effect the involuntary termination of Mother's parent-child relationship with J.A., the COFC must have presented clear and convincing evidence establishing that:

(A) one (1) of the following exists:

- (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
- (ii) a court has entered a finding under Ind. Code § 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of

the court's finding, the date of the finding, and the manner in which the finding was made; or

- (iii) after July 1, 1999 the child has been removed from the parent and has been under the supervision of a county officer of family and children for at least fifteen (15) months of the more recent twenty-two (22) months;

(B) there is reasonable probability that:

- (i) the condition that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
- (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

I.C. § 31-35-2-4(b)(2).

Additionally, in determining whether a reasonable probability exists that the reasons for removal will not be remedied, the trial court must judge the parent's fitness to care for the children at the time of the termination hearing, taking into consideration any evidence of changed conditions. *In re Termination of Parent-Child Relationship of D.D.*, 804 N.E.2d 258, 266 (Ind. Ct. App. 2004), *trans. denied*. A trial court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation." *Id.*

II. *Conditions Leading to J.A.'s Removal*

Mother first asserts that the COFC did not present clear and convincing evidence of a reasonable probability that the conditions resulting in J.A.'s removal would not be

remedied. In particular, Mother contends that J.A. was primarily removed from her care due to her drug abuse, but that the evidence in the record supports she had been drug-free for six months prior to the termination hearing.

Our review of the record reveals that, in fact, on the day of the hearing, the parties stipulated that Mother had tested negative for cocaine use during the previous six months. Our review of the record also indicates that Mother entered a drug treatment program in late 2005, and that she was still enrolled in the program when the hearing was held. Nevertheless, the record additionally reveals that Mother did not seek help for her drug addiction or comply with any of the trial court's dispositional orders until the summer of 2005 when her twelve-year-old son was removed from her care due to the COFC's determination that the living conditions were inadequate. Further, the record discloses evidence that during the time period when J.A.'s CHINS petition was being adjudicated, Mother consistently avoided or ignored the caseworker's requests to take drug tests. Thus, the record is void of any evidence pointing to Mother's willingness to change her habitual conduct on J.A.'s behalf. Rather, it appears that Mother was not prompted to take any actions to salvage her relationship with J.A. until another one of her children was removed from her care. By that time, J.A. was nearly a year old and more than six months had passed since the trial court issued its dispositional orders in J.A.'s CHINS matter.

We also note that despite testimony in the record by the family case manager that the COFC's intentions are to reunite Mother with her older son, the case manager additionally stated that she did not recommend the same outcome in J.A.'s case.

Specifically, the case manager conveyed that she did not support uniting Mother and J.A. in light of J.A.'s special needs, a lack of knowledge as to Mother's current living conditions, and a lack of any bond between J.A. and Mother, as he has never been in her care. Furthermore, the record discloses that Mother has not allowed the COFC into her brother's home, where she is now living, to investigate the living conditions. Thus, even though Mother had moved since the older child was removed due to inadequate conditions, the trial court had no evidence before it to show that Mother's new living environment was any safer than the previous one. Moreover, even if Mother's recent efforts to better herself were to support a finding that the conditions leading to J.A.'s removal would be remedied, our review of the record still supports the trial court's finding that there is a reasonable probability that a continuation of the parent-child relationship poses a threat to J.A.'s well-being, a point which we discuss below. *See* I.C. § 31-35-2-4(b)(2).

II. Threat to J.A.'s Well-Being

Mother also asserts that the COFC did not present clear and convincing evidence of a reasonable probability that the continuation of the parent-child relationship poses a threat to J.A.'s well-being. Specifically, Mother alleges she does not pose a threat to J.A. because she has obtained stable housing with her brother, completed parenting classes, and remains drug-free. We disagree.

Although the record supports Mother's contentions that she has moved into her brother's home, completed parenting classes, and stayed off cocaine while enrolled in a drug treatment program, several circumstances lead us to agree with the trial court that

placing J.A. with Mother poses a risk to the child's well-being. Foremost, the record indicates that Mother has not visited with J.A. since his birth. Thus, it is unlikely that Mother has any concept of the amount and type of care J.A. requires as a special needs child. The record further establishes that J.A.'s foster parent, who plans to adopt him, has a medical background, and is willing to care for and address his considerable physical, mental, and emotional needs. As mentioned earlier, the record also makes clear that the exact conditions of Mother's living situation are unknown, as she has not allowed the COFC into her brother's home to investigate. Therefore, due to the uncertainties surrounding Mother's living conditions and her ability to care for J.A.'s special needs, we conclude that the trial court properly found that continuation of the parent-child relationship likely poses a threat to J.A.'s well-being. Thus, in our view, there would be no value in uprooting J.A., a child who has overcome so much since birth and has no tie to his biological Mother. Accordingly, we conclude that the trial court properly terminated Mother's parental rights.

CONCLUSION

Based on the foregoing, we conclude that the trial court properly terminated Mother's parental rights to J.A..

Affirmed.

KIRSCH, C.J., and FRIEDLANDER, J., concur.